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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,452	09/20/2001	Olivier Dovern	20982-27	6599
116	7590	12/21/2004	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,452

Applicant(s)

DOVERGNE ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45, 48 and 49 is/are allowed.
- 6) ☒ Claim(s) 1-15, 18-47, 50-53, 55, 56 and 59-62 is/are rejected.
- 7) ☒ Claim(s) 16, 17, 54, 57 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-42, 50,52-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 52-62, the term "the gap" lacks prior antecedent basis. In claim 50, the term "bearing surface" lacks prior antecedent basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15,18,19,31,32,35-42,43,51,52,60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade (6,000,405) in view of Magharehi (5,937,866).

With respect to claims 1,43, 51,61,62, De Laforcade discloses a device for applying a substance to the hair, the device comprising a receptacle (2) having a longitudinal axis and configured for containing the substance to be applied, and an applicator portion (22) fixed on the receptacle and having at least one delivery orifice 40) enabling the substance to be delivered, wherein the applicator portion has teeth (27), arranged around a closed oval curve, as set forth in column 3, line 4, each tooth

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having a longitudinal axis, the gap between the teeth being such that they allow hairs to pass between the teeth; as set forth in column 5, lines 35-60.

It is noted that De laforcade did not teach of teeth having longitudinal axis that are substantially parallel to the longitudinal axis of the receptacle; as claimed by applicant. However, in a similar art, Magharehi evidences the use of teeth having longitudinal axis that are parallel to the longitudinal axis of the receptacle for distribution of hair dye throughout the hair and along the hair shafts.

Therefore, given the teaching of Magharehi, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of De Laforcade, as taught by Magharehi for distribution of hair dye throughout the hair and along the hair shafts.

As to the first position being different from a second position, such that the orifice does not communicate with the substance contained in the receptacle, a plurality of substance delivery ducts and shutters; Magharehi teaches such limitations, in column 4, lines 1-15. As to an intermediate row, Magharehi teaches of an intermediate row as best seen in FIG.3.

With respect to claims 2-15, 18, 19, 31, 32, 35-42, 52, 60 De Laforcade discloses all the limitations, as set forth in column 3, lines 1-10; column 5, lines 35-60; and as best seen in FIGS.1-3; and, as set forth in Magharehi column 4, lines 1-15; and as best seen in FIGS.1-3.

Claims 13,14,20-30,43,44,53 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade (6,000,405) in view of Magharehi (5,937,866) in view of Kajgana (6,062,230).

With respect to the above claims, it is noted that the above combination of references teaches all the limitations, except for an applicator having an internal sealing lip for engaging a skirt of the receptacle when the applicator portion is fixed thereon, and the internal lip defining an inside space that is permanently in communication with the outside via the at least one substance delivery orifice; as claimed by applicant. However, in a similar art, Kajgana evidences the use of an applicator having an internal sealing lip for engaging a skirt of the receptacle when the applicator portion is fixed thereon, and the internal lip defining an inside space that is permanently in communication with the outside via the at least one substance delivery orifice and an adapter having such configurations; as claimed by applicant, to provide a device that enables an even, controlled dye application onto the hair of a user.

Therefore, given the teaching of Kajgana, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of De Laforcade/Magharehi; as taught by Kajgana to provide a device that enables an even, controlled dye application onto the hair of a user.

Claims 33,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade (6,000,405) in view of Magharehi (5,937,866) in view of Diaz (5,937,864).

With respect to claims 33,34, it is noted that the above combination of references did not teach of an applicator wherein the receptacle includes a removable cap at an

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end opposite from the applicator portion; as claimed by applicant. However, in a similar art, Diaz evidences the use of a device having a cap at an end opposite from the applicator portion for preventing the removal of the liquid and to stand on the plane surface.

Therefore, given the teaching of Diaz, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a cap in the device of De Laforcade/Magharehi, as taught by Diaz, for preventing the removal of the liquid and to be able to stand the device on a plane surface.

Claims 46,47,50,55,56,59 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade (6,000,405) in view of Magharehi (5,937,866) in view of Morganroth (4,273,144).

With respect to the above claims, it is noted that the above combinations of references did not teach of an adapter portion, as claimed by applicant. However, in a similar art, Morganroth, evidences the use of an adapter to improve the applicator liquid spreading ability.

Therefore, given the teaching of Morganroth, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of De Laforcade/Magharehi; as taught by Morganroth to improve the applicator liquid spreading ability.

Allowable Subject Matter

Claims 45,48, 49 are allowed.

Claims 16,17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

Applicant's arguments with respect to claims 1-62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

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4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
December 14, 2004


PEDRO PHILOGENE
PRIMARY EXAMINER